

ESTTA Tracking number: **ESTTA684776**

Filing date: **07/20/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060426
Party	Defendant Unitabac, LLC
Correspondence Address	RYAN S OSTERWEIL DAY PITNEY LLP 7 TIMES SQ NEW YORK, NY 10036 UNITED STATES trademarks@daypitney.com, dgreen- baum@daypitney.com, rbrown@daypitney.com, rosterweil@daypitney.com, jlan- zano@daypitney.com
Submission	Motion to Compel Discovery
Filer's Name	Ryan S. Osterweil
Filer's e-mail	rosterweil@daypitney.com, rbrown@daypitney.com, jlanzano@daypitney.com, trademarks@daypitney.com
Signature	/Ryan S. Osterweil/
Date	07/20/2015
Attachments	Motion to Compel Discovery.pdf(54236 bytes) Brown Declaration With Exhibits.pdf(743326 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CLOUD9 DISTRIBUTORS LLC,)	
)	
)	
Petitioner,)	Cancellation No. 92060426
)	Registration No. 4068062
v.)	
)	
UNITABAC, LLC,)	
)	
Registrant.)	
)	

**MOTION TO COMPEL DISCOVERY RESPONSES AND
TO EXTEND DISCOVERY DEADLINE FOR LIMITED PURPOSES**

Registrant Unitabac, LLC (“Registrant” or “Unitabac”) respectfully submits this motion, pursuant to 37 CFR § 2.120(e) and TBMP § 523.01, for an order to compel Petitioner Cloud 9 Distributors, LLC (“Petitioner” or “Cloud 9 Distributors”) to respond fully and completely to Unitabac’s discovery demands.

The issue giving rise to this motion is Petitioner’s failure to provide fully responsive responses to Unitabac’s discovery requests. For example, with respect to deficient document production, Cloud 9 Distributors has: a) inappropriately redacted information from documents; b) failed to produce documents related to its contention that various entities are predecessors of Cloud 9 Distributors, such as documents related to the formation and dissolution of those alleged predecessors, and the transfer of assets from one predecessor to its supposed successor; c) failed to produce documents concerning the decision to develop and use the mark at issue (CLOUD9); and d) produced no documents demonstrating that the alleged predecessor entities were authorized or licensed to do business. In response to interrogatories from Registrant, Petitioner’s responses are unsworn and, with respect to several questions, deficient.

Unitabac files this motion only after it has made a good faith effort, through emails and letters to counsel for Cloud 9 Distributors, to resolve the dispute.

Unitabac also hereby moves to extend the deadline for discovery in this proceeding, only for the purpose of taking depositions which have noticed by Unitabac, pursuant to 37 CFR § 2.120(a) and TBMP § 509.

Factual Background

Unitabac is the owner of Registration No. 4,068,062 for CLOUD9, covering cigarillos and cigars in Class 34. The registration issued on December 6, 2011, and is based on a first use date of July 28, 2010. On November 20, 2014, Cloud 9 Distributors filed a Petition for Cancellation, claiming that it sold and/or distributed hookah products bearing the CLOUD9 mark since at least as early as November 2003.¹ Thus, an important issue in this proceeding is when Cloud 9 Distributors actually began using CLOUD9, and whether Cloud 9 Distributors can take advantage of alleged prior use by alleged predecessors.²

On March 19, 2015, Unitabac served a First Set of Interrogatories and a First Request for Production of Documents on Cloud 9 Distributors. Counsel from Cloud 9 Distributors thereafter asked for an extension due to an upcoming trial; in response, Unitabac agreed to a 20-day extension after Cloud 9 Distributors' counsel gave assurances that his client would be providing

¹ That assertion appears to be false, as the records from the California Secretary of State indicate that the filing to establish Cloud 9 Distributors was on August 29, 2012. (Declaration of Richard H. Brown ¶ 4).

² Petitioner claims that Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Distributors, Inc. (sometimes cited as dba for Ahmad (Mike) Nouredine) are predecessors who supposedly used CLOUD 9 before Registrant's first use in July 2010. (See Ex. I at 3). On June 18, 2013, Mr. Nouredine filed an application to register CLOUD 9 CHARCOAL for "Smoker's articles, namely hookah charcoal," claiming first use on December 1, 2012 (App. No. 85963252). That application was abandoned on March 28, 2014.

substantive answers to most of the interrogatories and be producing documents in response to the requests to produce. (See Brown Decl. ¶ 5, Ex. E).

On May 12, 2015, four days after the revised deadline, Cloud 9 Distributors sent written document responses and interrogatory responses. (See Brown Decl., Exs. A (First Set of Interrogatories), B (Petitioner's response), C (First Requests for Production), and D (Petitioner's response)). Petitioner's response to the First Set of Interrogatories contained spurious objections to virtually all of the interrogatories. Early the next day, Unitabac immediately called these improper objections to the attention of Petitioner's counsel (see Brown Decl. Ex. F), who did not respond to the email. As a result, Unitabac served a second set of interrogatories in the evening of May 13, 2015. (Brown Decl. ¶ 8).

On May 12, 2015, Petitioner's counsel also promised that his client's responsive documents would be emailed as soon as he had reduced their file size. They were not sent as promised. In a May 19, 2015 letter, Unitabac asked about the whereabouts of the documents, and pointed out issues with Petitioner's written response to several of the document requests:

Request No. 3. Request 3(a) asked for all documents concerning the creation of you, Sultan Tobacco, Inc. and Sultan Tobacco USA, Inc. In the response to that request, you indicated that documents produced would be limited to those from the Secretary of State or other entity. That response unduly limits the scope of documents responsive to the request, and excludes from production documents regarding internal discussions of the creation of each entity or any other correspondence or documentation concerning the entities' formation, which may lead to the discovery of admissible evidence concerning the allegations about when the Cloud 9 mark was used by your client or its "predecessors." Please confirm that your client will provide all responsive documents to this request.

Request 13 asked for all documents concerning communications with respect to the Registered Mark or the subject matter of this proceeding. While your objection to the use of "Registered Mark" is noted in your response to Request 13, the response ignores the explicit request for documents concerning the subject matter of the proceeding. Please confirm your client will provide all documents responsive to that aspect of the request.

(Brown Decl. ¶ 10, and Ex. G).

After receiving no response to the May 19 Letter, counsel for Unitabac followed up with counsel for Cloud 9 Distributors. On June 1, 2015, counsel for Cloud 9 Distributors indicated that he did not respond to the letter because he “assumed that [the] letter was moot,” which it clearly was not. Counsel for Unitabac made further email attempts on June 1, June 9, and June 15 to receive responses to the May 19 letter, but no response has ever been provided to the deficiencies in those two responses. (Brown Decl. ¶ 11).

As for the other issue in the May 19 Letter (the whereabouts of Petitioner's document production), Petitioner ignored that issue until June 4, 2015, when its counsel stated that the documents had been sent by mail to Registrant's counsel, but were returned as “undeliverable.” (Brown Decl. ¶ 12). Counsel for Unitabac again provided an address to which the documents could be sent (which Petitioner's counsel already had), and followed up on June 9 as no documents had yet to be received. (Brown Decl. ¶ 13).

On June 15, 2015, Petitioner provided Responses to the Second Set of Interrogatories, Written Responses to the Second Request for Production of Documents, and finally produced documents. (Brown Decl., Exs. H (Second Set of Interrogatories), I (Petitioner's response), J (Second Requests to Produce), and K (Petitioner's response). However, the document production is deficient in numerous respects:

1. Improper Redactions. Cloud 9 Distributors produced purported invoices from 2006 to 2012, which are redacted to shield the type of products supposedly sold under the CLOUD9 mark, the name of the customers being invoiced, and pricing information. In addition, a purported May, 2009 Exclusive Distributorship Agreement has had one of the parties, the signature block, and other information redacted. Petitioner has redacted important information

that goes to its claim that alleged predecessors used the CLOUD9 mark in connection with the sale of hookah tobacco products as early as May 2003.

2. Failure to Produce Certain Documents . Although Cloud 9 Distributors' Petition alleges that it used CLOUD 9 mark in November 2003, Cloud 9 Distributors appears to claim that other entities, which were its predecessors-in-interest, had used the mark before the formation of Cloud 9 Distributors in 2012, and that Petitioner is claiming benefit from that alleged use. As a result, Unitabac served requests directed to that allegation that seek all documents related to:

- a. The creation of those entities, licenses/authority for those entities to do business, and the dissolution of those entities (First RFP, Requests Nos. 3 and 4)
- b. The allegations that the entities are predecessors of Cloud 9 Distributors (First RFP, Request No. 9);
- c. A transfer of ownership interests or any assets between and among the entities or Ahmad Noreddine (First RFP, Request No. 10)
- d. Development and use of the CLOUD9 mark by any of the entities (Second RFP, Request No. 8); and
- e. The claim that any of the prior entities owned the mark (Second RFP, Request No. 16).

Registrant also sought documents related to communications between Cloud 9 Distributors and anyone else concerning the CLOUD 9 mark or the subject matter of this proceeding (Second RFP, Request No. 7).

In its written responses to the document requests, Petitioner objected to producing documents concerning the creation of Cloud 9 and its alleged predecessors other than corporate documents. (See Petitioner's Response to the First RFP at 3, Brown Decl., Ex. D). That objection is improper, was first raised by Registrant in its May 19 Letter, and was the subject of multiple follow-ups by Registrant's counsel. Petitioner has failed to respond on that issue.

(Brown Decl. ¶ 17). Petitioner also claimed that there no responsive documents concerning communications between it and anyone else concerning the CLOUD9 mark or the subject matter of this proceeding. In all other respects, Petitioner indicated that it would produce responsive, non-privileged documents. The issues are as follows:

- a. Petitioner has produced no documents concerning corporate formation or dissolution, and the only licensing documents are for Cloud 9 Distributors, which post-date Registrant's first use in July 2010;
- b. Petitioner has produced no documents related to its contention that the various identified entities are its predecessors;
- c. Petitioner has produced no documents related to a transfer of ownership interests or any assets between and among the entities or Ahmad Noreddine;
- d. Petitioner has produced no documents related to the decision to develop and use the CLOUD9 mark by any of the entities; and
- e. Petitioner claims that it has no responsive documents to the request for communications between it and anyone else concerning the CLOUD9 mark or the subject matter of this proceeding. Yet, Petitioner's principal, Mr. Nouredine, applied for a registration on CLOUD 9 CHARCOAL in June 2013 (based on a first use date of December 1, 2012) and abandoned that application. Thus, at a minimum, there should be documents responsive to this request that concern that application.

3. Interrogatories

The interrogatory responses are wanting as well, as follows:

- Neither response has been sworn to, as required under the rules, as required by Fed. R. Civ. P. 33(b)(3) and TBMP § 405.04(b);

- Cloud 9 Distributors did not provide information about when it started to use CLOUD9 in commerce (Interrogatory No. 19, Second Set of Interrogatories);
- There is no summary of Mr. Nouredine's knowledge for the responses to Interrogatories (Interrogatory Nos. 21-24, Second Set of Interrogatories);
- Petitioner failed to answer Interrogatory No. 28 (sales in New Jersey, where Unitabac is located) even though such information should be available to it; and
- Petitioner failed to provide information about volume of sales (on annual basis) (Interrogatory No. 29, Second Set of Interrogatories) even though such information is related to the claim of continued use by Petitioner or its predecessor;

4. Efforts by Registrant to Resolves the Discovery Issues

As discussed above, Petitioner produced documents a month late, for no apparent reason. In addition, Petitioner never responded to the deficiencies raised in the May 19 Letter. On June 29, 2015, counsel for Unitabac inquired by email as to the basis for redactions in the documents produced by Petitioner, and identified the TTAB Standard Protective Order in place in this proceeding. No response was received.

On July 9, 2015, counsel for Unitabac sent a letter to counsel for Cloud 9 Distributors regarding deficiencies in the Written Responses to the Second Request for Production of Documents, Responses to the Second Set of Interrogatories, and the document production, as well as a further inquiry regarding the deficiencies outlined in the May 19 Letter that had not been addressed. The letter asked for times to meet and confer to discuss resolving those issues. (Brown Decl. ¶ 19, Exhibit L).

Counsel for Cloud 9 Distributors called in response to the July 9 Letter, but the conversation was not productive given that he had not yet read the July 9 Letter. There was some discussion about the redaction issue. Petitioner's counsel stated that sales information and customer names on the invoices (which are dated 2006-12) are confidential to his client. He also stated that amount of sales should not be relevant. However, no resolution was reached and Petitioner's counsel promised to read the letter. (Brown Decl. ¶ 20). After Petitioner's counsel failed to respond to the request for times to meet and confer, Registrant sent a letter on July 13, 2015 asking for times on July 14-16 to confer regarding the discovery issue. (Brown Decl. ¶ 21, Ex. M). Petitioner did not respond to that letter.

Argument

The Board should compel Petitioner to provide the required discovery. The discovery requests on which Petitioner is deficient go to the central issues in the case: when Petitioner first used the CLOUD9 mark, and for what products, and Petitioner's claim that alleged prior use by other entities that are supposedly predecessors which inure to its benefit. For example, all of the invoices should be un-redacted to show the products associated with the CLOUD9 reference, the identity of the customers being invoiced, and the price information.

Sales information should not be redacted for several reasons. First, such information is relevant to Petitioner's claim that it has engaged in continuous use since 2003. Invoices that have their quantities and prices redacted impede a corroboration that, in fact, sales of such products were made. If Petitioner has a legitimate concern about some of that information being shared with Unitabac employees, Petitioner should be required to resolve that concern by a protective order, not by shielding the information from Unitabac's counsel. Second, and more generally, it is not common practice to permit one to redact plainly responsive documents simply

because the producing party does not believe that certain information is relevant. There is wide latitude permitted during discovery, and allowing producing parties to redact portions of documents based on perceived relevance is contrary to the generally wide latitude of discovery permitted. *See* Fed R. Civ. P. 26(b); TBMP § 406.02.

Documents concerning formation, dissolution, authority to do business of the alleged predecessors, and transfer of assets or other interests by or to those entities are clearly germane to Petitioner's argument that use by those entities should insure to its benefit. Petitioner cannot produce alleged invoices or some promotional material created by those entities and then withhold other documents relating to their alleged connection (or lack thereof) to Petitioner. Nor can Petitioner withhold other documents that relate to the alleged ownership by those entities of CLOUD9, or the decision to use CLOUD9 as a mark. The Board should also compel Petitioner to produce non-privileged information concerning Mr. Nouredine's application for CLOUD 9 CHARCOAL, given the similarity of that mark to the trademark at issue.

There can be no doubt that Petitioner should have interrogatory answers provided under oath (cite rule), and provide full responses to Interrogatories Nos. 19, 21-24, 28 and 29. That information is germane for the reasons stated above, and Petitioner should provide complete responses to those interrogatories.

Depositions

On July 17, 2015, Unitabac has noticed the depositions of Ahmad Nouredine, Diana Nouredine, and a corporate representative of Cloud 9 Distributors. (Brown Decl. ¶ 22). The depositions are noticed for August 3, 2015, the date on which discovery is scheduled to close under the original (and current) schedule.³ However, given the unresolved discovery issues that

³ The date in the schedule is August 2, 2015, which falls on a Sunday.

are the subject of this motion, Unitabac hereby requests an extension of time to take the aforementioned depositions until receipt of all documents and responses to Unitabac's discovery demands. That will allow the depositions to be conducted as efficiently as possible and would minimize the chance that a deposition would need to be left open pending the receipt of additional discovery. It would prejudice Unitabac to require it to go forward without having first received full discovery responses from Cloud 9 Distributors. There has been no previous extension request.

Conclusion

Accordingly, Unitabac requests that the Board issue an order requiring Cloud 9 Distributors to cure the discovery deficiencies outlined above within 30 days; extend the deadline for discovery only for the purpose of allowing Unitabac to take the depositions noticed on July 17, 2015 until 60 days after the date of the order, and extend the other upcoming dates in the original scheduling order accordingly.

Respectfully submitted,

s/Richard H. Brown
DAY PITNEY LLP
Richard H. Brown
Ryan S. Osterweil
7 Times Square
New York, NY 10036
Telephone: (212) 297-5800
Facsimile: (973) 206 6129
Email: rbrown@daypitney.com
rosterweil@daypitney.com

Dated: July 20, 2015

Certificate of Service

I hereby certify that on the date set forth below a true and correct copy of the foregoing **Motion to Compel Discovery Responses and to Extend Discovery Deadline for Purpose of Unitabac Taking Prior-Noticed Depositions** was served upon the attorneys of record for the Petitioner by email, as agreed-upon by the parties, to literan@strategiclegalcounseling.com.

Signature: s/Ryan Osterweil

Date: July 20, 2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CLOUD9 DISTRIBUTORS LLC,

Petitioner,

v.

UNITABAC, LLC,

Registrant.

Cancellation No. 92060426

Registration No. 4068062

**DECLARATION OF RICHARD H. BROWN IN SUPPORT OF UNITABAC’S MOTION
TO COMPEL DISCOVERY RESPONSES**

I, RICHARD H. BROWN, upon my oath, hereby declare and state as follows:

1. I am an attorney licensed in the states of New York and New Jersey, and a partner at the law firm of Day Pitney LLP, counsel to Unitabac, LLC, registrant in this action (“Registrant” or “Unitabac”).

2. I submit this Declaration in support of Unitabac’s Motion to Compel Discovery Responses and to Extend Discovery Deadline for Purpose of Unitabac Taking Prior-Noticed Depositions. The information set forth herein is based on my personal knowledge or upon my review of public records and other publicly available information, as stated below.

3. On November 20, 2014, Cloud 9 Distributors LLC (“Cloud 9 Distributors” or “Petitioner”) filed a Petition for Cancellation of Unitabac’s U.S. Trademark Registration No. 4,068,062, claiming that it sold and/or distributed hookah products bearing the CLOUD9 mark since at least as early as November 2003.

4. On July 20, 2015, I have reviewed a document on the California Secretary of State website that indicates that Petitioner Cloud 9 Distributors was not formed as an limited liability company until August 29, 2012.

5. On March 19, 2015, Unitabac served a First Set of Interrogatories and a First Request for Production of Documents on Petitioner, copies of which are attached hereto as Exhibits A and C, respectively. On April 13, 2015, Petitioner's counsel, Louis Teran, requested a 30-day extension of time to respond to the discovery requests because he had an unexpected trial scheduled for the following week (when the response was due). I spoke to Mr. Teran, and we agreed to a 20-day extension after he gave me an assurance that his client would be providing substantive answers to most of the interrogatories and be producing documents in response to the requests to produce. (I attach hereto as Exhibit E a copy of my email to Mr. Teran of April 15, 2015).

6. Petitioner served written responses to the First Set of Interrogatories and a First Request for Production of Documents on May 12, 2015, four days after the extended deadline. I attach hereto as Exhibits B and D a copy of those responses.

7. Unfortunately, Petitioner's response to the First Set of Interrogatories did not provide substantive answers to virtually all of the interrogatories. Petitioner claimed that the defined term "Registered Mark" was only limited to use of CLOUD 9 for cigars and cigarillos, and therefore took the position that most of the interrogatories did not apply to its activities. Given the nature of the dispute, that was a bad-faith and implausible interpretation of a defined term.

8. The following day, I sent Mr. Teran an email notifying him that we regarded these objections as improper and asserted in bad faith, especially in light of the assurance I was given

that his client would be furnishing substantive responses to most of the interrogatories. (I attach hereto as Exhibit F a copy of my May 13, 2015 email to Mr. Teran). On the I immediately called these improper objections to the attention of Petitioner's counsel, who did not respond. As a result, Unitabac served a Second Set of Interrogatories and Second Request for Production on May 13, 2015, copies of which are attached hereto as Exhibits H & J.

9. On May 12, 2015, Petitioner's counsel indicated that responsive documents would be emailed as soon as their file size was reduced, but no documents were ever received.

10. In a letter sent May 19, 2015, I inquired about the whereabouts of the documents, and pointed out deficiencies with Petitioner's written response to several of the document requests. A copy of the May 19 letter is annexed hereto as Exhibit G.

11. After receiving no response to the May 19 letter, I followed up with Petitioner's counsel by email on May 28, 2015. On June 1, 2015, Mr. Teran told me by email that he did not respond to the letter because he "assumed that [my] letter was moot," which it clearly was not. I made further email attempts on June 1 and June 15 to receive responses to the May 19 letter, but no response has ever been provided to the deficiencies in those two responses.

12. On June 4, 2015, Petitioner's counsel informed me that the documents had been sent by mail to my office, but were returned as "undeliverable."

13. Our firm immediately provided Petitioner's counsel with the address of our law firm to where the documents should be sent.

14. On June 15, 2015, Petitioner provided a Responses to the Second Set of Interrogatories and to the Second Request for Production of Documents, and finally produced documents. A copy of the Response to the Second Set of Interrogatories is attached as Ex. I, and

a copy of the Response to the Second Request for Production of Documents is attached as Exhibit K.

15. I have reviewed the production and it is deficient in several respects. Petitioner improperly redacted from invoices information that would identify the product sold under the term CLOUD 9, the identity of the customer being invoiced, and the quantity information. In addition, a 2009 Distributorship Agreement has signature line and customer information redacted.

16. Petitioner's production does not include a number of documents that are responsive to Registrant's requests even though Petitioner promised to produce documents in its possession, custody or control. For example, there are no documents relating to corporate formation of the alleged predecessor companies, transfer of ownership interest or assets among the alleged predecessor companies and Petitioner, and the claim of ownership of the CLOUD9 mark by the alleged predecessor companies.

17. In its written responses to Request No. 3 of Registrant's First Request to Produce, Petitioner objected to producing documents concerning the creation of Cloud 9 and its alleged predecessors other than corporate documents. See Ex. D at 3. That objection is improper, was first raised in my May 19 letter (Ex. G), and was the subject of multiple follow-up emails which I sent to Petitioner's counsel. Petitioner has failed to respond on that issue.

18. Petitioner's responses to the Second Set of Interrogatories are lacking as well, as a number of interrogatories were not answered, and the responses were not sworn to by Petitioner's counsel.

19. In a further effort to resolve the discovery dispute, I sent a letter to Petitioner's counsel on July 9, 2015. (A copy of that letter is attached as Ex. L). That letter addressed

deficiencies in the Responses to the Second Request for Production of Documents, Responses to the Second Set of Interrogatories, and the document production, and again brought up the deficiencies outlined in the May 19 Letter that had not been addressed. In that letter, I also sought times to meet and confer to discuss resolving those issues.

20. On July 9, Petitioner's counsel called me in response to receipt of my July 9 letter. The conversation was not productive given that he had not yet read the letter. Nevertheless, Petitioner's counsel stated that sales information and customer names on the invoices (which are dated 2006-12) are confidential to his client, and thus they were properly redacted. He also stated that amount of sales should not be relevant. I disputed that the redactions were appropriate. No resolution was reached to the redaction issue, and Mr. Teran told that he would read the letter.

21. Having not heard back from Mr. Teran on a request for a meet and confer on July 10 or early the following week, I sent a follow-up letter on July 13, 2015, asking for times on July 14, 15 or 16 to confer regarding the discovery issue. I stressed the need for a meet and confer because we intended to take depositions and would like to have the written discovery issues resolved. I received no response to that letter. (A copy of that letter is attached hereto as Ex. M).

22. On July 17, 2015, Unitabac noticed the depositions of Ahmad Nouredine, Diana Nouredine, and a corporate representative of Cloud 9 Distributors, all for August 3, 2015.

I hereby declare under penalty of perjury that the foregoing statements are true and correct. Executed on July 20, 2015.



RICHARD H. BROWN

Certificate of Service

I hereby certify that on the date set forth below a true and correct copy of the foregoing **Declaration of Richard H. Brown in Support of Motion to Compel Discovery Responses and to Extend Discovery Deadline for Purpose of Unitabac Taking Prior-Noticed Depositions** was served upon the attorneys of record for the Petitioner by email, as agreed-upon by the parties, to lteran@strategiclegalcounseling.com.

Signature: s/Ryan Osterweil

Date: July 20, 2015

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CLOUD9 DISTRIBUTORS LLC,)	
)	Cancellation No. 92060426
)	Registration No. 4068062
Petitioner,)	
)	
v.)	
)	
UNITABAC, LLC,)	
)	
Registrant.)	

REGISTRANT’S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Registrant, Unitabac, LLC (“Registrant” or “Unitabac”), by its undersigned attorneys, hereby requests that the following Interrogatories be answered, separately and fully, in writing and under oath, by Petitioner Cloud9 Distributors LLC (“Petitioner” or “Cloud9 Distributors”), within thirty (30) days of the date hereof as provided by the Federal Rules of Civil Procedure. The following Definitions and Instructions apply to these Interrogatories.

DEFINITIONS

A. The term “document” means any written, printed, typed, recorded or graphic matter, however produced, reproduced or stored, including the originals and all non-identical copies, whether different from the originals by reason of any notations made on such copies or otherwise, in the actual or constructive possession, custody or control of Petitioner including, but not limited to, contracts, letter agreements, e-mails, text messages, electronically stored information, records, correspondence, memoranda, handwritten notes, records or summaries of negotiations, records or summaries of interviews or conversations, audio or video recordings, all

web-based media, photographs, corporate minutes, diaries, telephone logs, schedules, drawings, statistical statements, work papers, disks, data cards, films, data processing files, charts, graphs, microfiche, microfilm, contracts, notices, reports, recitals, statements, worksheets, abstracts, resumes, summaries, jottings, market data, books, journals, ledgers, audits, maps, diagrams, research documents, newspapers, appointment books, desk calendars, expense reports, computer printout and other computer readable records, and all drafts or modifications thereof, and all non-identical copies of any such items. Any such Document bearing on any sheet or part thereof any marks such as initials, stamped indices, comments or notations or any character or characters which are not part of the signed text or photographic reproduction thereof is to be considered as a separate Document. Where there is any question about whether a tangible item otherwise described in these requests falls within the definition of Document such tangible item shall be produced.

B. The term “communication” includes without limitation any transmission of information from one person or entity to another, including, without limitation, by personal meeting, conversation, letter, memorandum, telephone, facsimile, or electronic mail. Each request that encompasses information relating in any way to Communications to, from, or within a business or corporate entity is hereby designated to mean, and should be construed to include, all communications by and between representatives, employees, agents or servants of the business or corporate entity.

C. The term “person” is defined as a natural person, firm, proprietorship, association, partnership, corporation or any other type of organization or entity.

D. The term “concerning” should be construed in the broadest possible sense to mean referring to, relating to, regarding, containing, identifying, monitoring, constituting, reflecting,

embodying, comprising, stating, dealing with, commenting on, responding to, analyzing, describing, consisting of, discussing, evidencing, mentioning, pertaining to, citing, summarizing, or bearing any logical or factual connection with the matter discussed.

E. “Petitioner,” “Cloud 9 Distributors,” “you,” or “your” refers to Petitioner Cloud9 Distributors LLC, and its parents, subsidiaries, divisions, affiliates, joint ventures, predecessors and successors, and the present or former officers, directors, shareholders, employees, agents or representatives acting on behalf of Cloud9 Distributors LLC.

F. “Registrant” or “Unitabac” refers to Registrant Unitabac, LLC and its parents, subsidiaries, divisions, affiliates, joint ventures, predecessors and successors, and the present or former officers, directors, shareholders, employees, agents or representatives who are acting on behalf of Unitabac, LLC.

G. The term “Registered Mark” refers to the CLOUD9 trademark that is the subject of Unitabac’s Registration No. 4,068,062 with the United States Patent and Trademark Office, registered on December 6, 2011, for “Cigarillos; Cigars” in International Class 34. The term “Registered Mark” shall also include variations thereof, including but not limited to “CLOUD 9.”

H. The term “identify,” when used with reference to a document, shall mean to state the date thereof, its author or creator (and, if different, the signer or signers), the addressee, the type of document (e.g., letter, memorandum, telegram, chart, magnetic tape, computer printout, tangible physical item, etc.), its present or last-known location and custodian, its general subject matter(s) and/or content, and all other means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a request for its production, pursuant to Rule 34 of the Federal Rules of Civil Procedure or a subpoena *duces tecum*. In the alternative, Cloud9

Distributors may produce the document(s) for inspection and copying at a time and place mutually convenient to the parties.

I. As used herein, the terms “all” and “each” shall be construed as all and each to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

J. The terms “and,” “or,” and “and/or” shall be read inclusively to mean “and” as well as “or.”

K. Terms in the singular include the plural, and terms in the plural include the singular.

L. As used herein, the term “date” means the exact date if known and if not known, the approximate date.

INSTRUCTIONS

A. Each separately numbered or lettered sub-part of each interrogatory requires a separate answer thereto.

B. These interrogatories shall be deemed to be continuing to the fullest extent permitted by the Rules, and Cloud9 Distributors shall promptly provide Unitabac with any supplemental answers and additional information which shall become available to Cloud9 Distributors at a later date.

C. Each interrogatory should be construed independently. No interrogatory should be construed by reference to any other interrogatory for the purpose of limiting the scope of the response to such interrogatory.

D. For the convenience of the Board and counsel, it is requested that each written interrogatory be set forth immediately preceding the corresponding response.

INTERROGATORIES

Interrogatory No. 1

For each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA, identify: (a) when and how each such person first learned about the Registered Mark; (b) when and how each person first used the Registered Mark in commerce and the period in which that person used the Registered Mark in commerce; (c) the individual persons who participated in the decision to use the Registered Mark in commerce; and (d) all persons with knowledge about those facts.

Interrogatory No. 2

For each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA that discontinued use of the Registered Mark, identify (a) when that entity stopped using the Registered Mark; (b) why such use was discontinued; (c) all persons who participated in any decision to discontinue such use; and (d) all persons with knowledge about those facts.

Interrogatory No. 3

To the extent not provided in response to previous interrogatories, identify all persons with knowledge of facts concerning your claim of ownership of the Registered Mark or any variation thereof, and for each such person set forth a summary of his or her factual knowledge.

Interrogatory No. 4

To the extent not provided in response to previous interrogatories, identify all persons with knowledge of facts concerning a claim of ownership of the Registered Mark or any variation thereof by Sultan Tobacco, Inc., and for each such person set forth a summary of his or her factual knowledge.

Interrogatory No. 5

To the extent not provided in response to previous interrogatories, identify all persons with knowledge of facts concerning claim of ownership of the Registered Mark or any variation thereof by Sultan Tobacco USA, Inc. and for each such person set forth a summary of his or her factual knowledge.

Interrogatory No. 6

To the extent not provided in response to previous interrogatories, identify all persons with knowledge of facts concerning claim of ownership of the Registered Mark or any variation thereof by Ahmad Nouredine, d.b.a. Mr. Distributors USA, and for each such person set forth a summary of his or her factual knowledge.

Interrogatory No. 7

Identify when, by whom, and by what method any ownership of the Registered Mark or any variation thereof was transferred from: (a) Sultan Tobacco, Inc. to another person; (b) Sultan Tobacco USA, Inc. to another person; (c) Ahmad Nouredine, d.b.a. Mr. Distributors USA to another person; and (d) Cloud9 Distributors to another person.

Interrogatory No. 8

Identify the geographic scope of marketing, advertising, sales, or offers for sale relating to products sold or offered under or bearing the Registered Mark or any variations thereof by you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

Interrogatory No. 9

If you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA have marketed, advertised or sold goods under or bearing the Registered

Mark or any variations thereof in New York, identify the dates when such activities first took place and whether they are ongoing.

Interrogatory No. 10

If you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA have marketed, advertised or sold goods under or bearing the Registered Mark or any variations thereof in New Jersey, identify the dates when such activities first took place and whether they are ongoing.

Interrogatory No. 11

Identify the total sales of goods (on an annual basis) sold under or bearing the Registered Mark or any variation thereof since the date of first use identified in Interrogatory No. 1 above.

Interrogatory No. 12

State whether a trademark search or any other type of search was conducted by (or on behalf of) you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., or Mr. Ahmad Nouredine dba Mr. Distributors USA, in connection with selection and adoption of the Registered Mark or any variation thereof. If so, identify all documents relating and/or referring to such search(es) and identify all person(s) with knowledge thereof.

Interrogatory No. 13

To the extent not fully provided in response to previous interrogatories, identify all facts supporting your continued use in commerce of the Registered Mark or any variation thereof since the date of first use identified in Interrogatory No. 1 above.

Interrogatory No. 14

If Cloud9 Distributors is aware of any reports of confusion or mistake as to the source, origin, sponsorship or association of goods offered or sold by Cloud9 Distributors under the

Registered Mark or any variation thereof or by Unitabac under the Registered Mark, provide a summary of the reports of confusion and persons with knowledge of such reports.

Interrogatory No. 15

Identify the relationship of Ahmad Nouredine to Cloud9 Distributors, LLC, Sultan Tobacco, Inc. and Sultan Tobacco USA, Inc.

Interrogatory No. 16

Identify the relationship of Diana Nouredine to Cloud9 Distributors, LLC, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Distributors USA.

Interrogatory No. 17

Identify all persons whom Cloud9 Distributors intends to call as expert witnesses in this proceeding and state their qualifications as experts, the subject matter on which each expert is expected to testify, the substance of the facts and opinions to which each expert is expected to testify, and include a summary of the grounds for each opinion.

Interrogatory No. 18

Identify all persons who supplied information for or participated in responding to these Interrogatories and to Registrant's First Request for Production of Documents.

Respectfully submitted,

/Ryan S. Osterweil/

DAY PITNEY LLP

Richard H. Brown

David I. Greenbaum

Ryan S. Osterweil

7 Times Square

New York, NY 10036

Telephone: (212)-297-5800

Facsimile: (973)-206-6129

Email: rbrown@daypitney.com
dgreenbaum@daypitney.com
rosterweil@daypitney.com

Dated: March 19, 2015

Certificate of Service

I hereby certify that on the date set forth below a true and correct copy of the foregoing **Registrant's First Set of Interrogatories** was served upon the attorneys of record for the Petitioner by email, as agreed-upon by the parties, to literan@strategiclegalcounseling.com.

Signature: /Ryan S. Osterweil/

By: Ryan S. Osterweil

Date: March 19, 2015

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 4068062
Mark: Cloud9
Registration Date: December 6, 2011

_____)	
CLOUD9 DISTRIBUTORS, LLC,)	
)	
Petitioner,)	
)	OPPOSITION NO: 91219336
v.)	
)	
UNITABAC, LLC,)	
)	
Registrant.)	
_____)	

**PETITIONER'S RESPONSE TO REGISTRANT'S FIRST SET OF
INTERROGATORIES**

Petitioner hereby submits its responses to Registrant's first set of interrogatories.

PRELIMINARY STATEMENT

Petitioner, has not yet completed the investigation of the facts related to this case, has not yet completed discovery in this action, and has not yet completed preparation for trial. All of the responses contained herein are based only upon such information and documents as are presently available to and specifically known to Petitioner or specifically recalled by him. It is anticipated that further discovery and further independent investigation may supply additional responses, which may in turn clarify and add meaning to known facts, as well as establish entirely new factual matters, all of

which may lead to substantial additions to, changes in, and variations from the responses herein set forth.

The following responses are given without prejudice to the right of Petitioner to produce evidence of any subsequently discovered facts that Petitioner may later discover or recall. Petitioner accordingly reserves the right at any time to revise, amend, correct, and add to or clarify any of the responses hereinafter set forth as additional facts are ascertained, analysis are made, legal research completed, and contentions determined or made. Petitioner's responses and objections are not, are not intended to be, and shall not be deemed an admission of the matters stated, implied, or assumed by any or all of the requests.

GENERAL OBJECTIONS

1. Petitioner objects to each request to the extent it seeks information that is privileged from disclosure under the attorney client privilege, the attorney work product doctrine, joint defense privilege, or related privileges and doctrines. Inadvertent disclosure or production of any privileged information or document otherwise immune from discovery shall not be deemed a waiver of any applicable privilege or work product protection.

2. Petitioner objects to each requests to the extent it seeks any information generated by or at the direction of Petitioner's counsel subsequent to the filing of the complaint in this action.

3. Petitioner objects to each request to the extent it seeks information of that is obtainable from some other source that is more convenient, less burdensome, or less expensive; and/or is already in Propounding Party's possession, custody, or control.

4. Petitioner objects to each request to the extent it seeks information or documents that are not reasonably calculated to lead to the discovery of relevant, material, or admissible evidence.

5. Petitioner objects to each request to the extent it seeks information or documents outside of Petitioner's possession, custody, or control.

6. Petitioner objects to each request to the extent it is vague, ambiguous, or overly broad and therefore requires Petitioner, to the rest of Petitioner's ability, to make a subjective determination as to what information or documents are being sought.

7. Petitioner objects to each request to the extent it seeks contentions of pure law that are abstract legal issues not dependent on the facts of this case, and therefore not discoverable.

Each of the foregoing General Objections is incorporated into each of the responses as follows:

Response to Interrogatory No. 1

- a) On or around January 2013, Mr. Ahmad Nourredine was informed of the Registered Mark by Propounding Party in Las Vegas, Nevada at a tobacco trade convention.
- b) Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:
It has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".
- c) Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

None. Responding Party has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

- d) Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

None. Responding Party has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Interrogatory No. 2

- a) Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows: Never. Responding Party has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".
- b) Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows: Never. Responding Party has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

- c) Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows: None. Responding Party has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".
- d) Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows: None. Responding Party has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Interrogatory No. 3

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows: None. Responding Party has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Interrogatory No. 4

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in

conjunction with “Cigarillos; Cigars”. Although Responding Party has used a trademark that is substantially similar to “CLOUD9”, it has never used said trademark in conjunction with “Cigarillos; Cigars”. Without waiving the above objection and complying with the express definition of “Registered Mark”, Responding Party responds as follows: None. Sultan Tobacco, Inc. has never claimed ownership to the “CLOUD9” mark for use in conjunction with “Cigarillos; Cigars”.

Response to Interrogatory No. 5

Objection. Vague and ambiguous with regard to the term “Registered Mark”. The definition of “Registered Mark” expressly identifies the trademark “CLOUD9” used in conjunction with “Cigarillos; Cigars”. Although Responding Party has used a trademark that is substantially similar to “CLOUD9”, it has never used said trademark in conjunction with “Cigarillos; Cigars”. Without waiving the above objection and complying with the express definition of “Registered Mark”, Responding Party responds as follows: None. Sultan Tobacco USA, Inc. has never claimed ownership to the “CLOUD9” mark for use in conjunction with “Cigarillos; Cigars”.

Response to Interrogatory No. 6

Objection. Vague and ambiguous with regard to the term “Registered Mark”. The definition of “Registered Mark” expressly identifies the trademark “CLOUD9” used in conjunction with “Cigarillos; Cigars”. Although Responding Party has used a trademark that is substantially similar to “CLOUD9”, it has never used said trademark in conjunction with “Cigarillos; Cigars”. Without waiving the above objection and complying with the express definition of “Registered Mark”, Responding Party responds as follows: None. Ahmad Nouredine, d.b.a. Mr. Distributor USA has never claimed ownership to the “CLOUD9” mark for use in conjunction with “Cigarillos; Cigars”.

Response to Interrogatory No. 7

Objection. Vague and ambiguous with regard to the term “Registered Mark”. The definition of “Registered Mark” expressly identifies the trademark “CLOUD9” used in conjunction with “Cigarillos; Cigars”. Although Responding Party has used a trademark

that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows: None. Responding Party nor any of the other parties mentioned in this interrogatory have ever claimed ownership to the "CLOUD9" mark for use in conjunction with "Cigarillos; Cigars".

Response to Interrogatory No. 8

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows: None. Responding Party nor any of the other parties mentioned in this interrogatory have ever claimed ownership to or used the "CLOUD9" mark for use in conjunction with "Cigarillos; Cigars".

Response to Interrogatory No. 9

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows: None. Responding Party nor any of the other parties mentioned in this interrogatory have ever claimed ownership to or used the "CLOUD9" mark for use in conjunction with "Cigarillos; Cigars".

Response to Interrogatory No. 10

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows: None. Responding Party nor any of the other parties mentioned in this interrogatory have ever claimed ownership to or used the "CLOUD9" mark for use in conjunction with "Cigarillos; Cigars".

Response to Interrogatory No. 11

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows: None. Responding Party nor any of the other parties mentioned in this interrogatory have ever claimed ownership to or used the "CLOUD9" mark for use in conjunction with "Cigarillos; Cigars".

Response to Interrogatory No. 12

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows: None. Responding Party nor any of the other parties mentioned in this

interrogatory have ever claimed ownership to or used the "CLOUD9" mark for use in conjunction with "Cigarillos; Cigars".

Response to Interrogatory No. 13

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows: None. Responding Party nor any of the other parties mentioned in this interrogatory have ever claimed ownership to or used the "CLOUD9" mark for use in conjunction with "Cigarillos; Cigars".

Response to Interrogatory No. 14

None

Response to Interrogatory No. 15

Owner, CEO, and operator of Sultan Tobacco, Inc. and Sultan Tobacco USA, Inc. CEO and operator of Cloud9 Distributor, LLC.

Response to Interrogatory No. 16

Owner of Cloud9 Distributors, LLC. None for other entities.

Response to Interrogatory No. 17

Objection. Compound and overbroad. Without waiving said objection, Responding Party responds as follows: None at this time. Responding Party has not completed discovery. Responding Party will amend when an expert witness is retained.

Response to Interrogatory No. 18

Ahmad Nouredine

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Teran', with a horizontal line extending to the right.

Louis F. Teran
Attorney for Petitioner
Cloud9 Distributors LLC.

Louis F. Teran
SLC LAW GROUP
1055 East Colorado Blvd., Suite #500
Pasadena, CA 91106
Telephone: (818) 484-3217 x200
Facsimile: (866) 665-8877
lteran@strategiclegalcounseling.com

CERTIFICATION OF SERVICE

I certify that a copy of this PETITIONER'S RESPONSE TO REGISTRANT'S FIRST SET OF INTERROGATORIES is being served via USPS on this the 8th day of May, 2015, to the following:

Registrant's Attorney/Representative:

Ryan S. Osterweil
DAY PITNEY LLP
7 Times Square
New York, NY 10063

A handwritten signature in black ink, appearing to read 'L. Teran', written over a horizontal line.

Louis F. Teran

EXHIBIT C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CLOUD9 DISTRIBUTORS LLC,)	
)	
)	
Petitioner,)	
)	
v.)	
)	
UNITABAC, LLC,)	Cancellation No. 92060426
)	Registration No. 4068062
Registrant.)	

REGISTRANT’S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Registrant, Unitabac, LLC (“Registrant” or “Unitabac”), by its undersigned attorneys, hereby requests that Petitioner Cloud9 Distributors LLC (“Petitioner” or “Cloud9 Distributors”), produce to the undersigned the documents described below within thirty (30) days of the date hereof. These requests are intended to include all documents and things in the possession, custody or control of Petitioner and its parents, divisions, subsidiaries, and affiliates, or any representatives thereof, wherever located. The following Definitions and Instructions apply to these Requests for Production.

DEFINITIONS

A. The term “document” means any written, printed, typed, recorded or graphic matter, however produced, reproduced or stored, including the originals and all non-identical copies, whether different from the originals by reason of any notations made on such copies or otherwise, in the actual or constructive possession, custody or control of Petitioner including, but not limited to, contracts, letter agreements, e-mails, text messages, electronically stored

information, records, correspondence, memoranda, handwritten notes, records or summaries of negotiations, records or summaries of interviews or conversations, audio or video recordings, all web-based media, photographs, corporate minutes, diaries, telephone logs, schedules, drawings, statistical statements, work papers, disks, data cards, films, data processing files, charts, graphs, microfiche, microfilm, contracts, notices, reports, recitals, statements, worksheets, abstracts, resumes, summaries, jottings, market data, books, journals, ledgers, audits, maps, diagrams, research documents, newspapers, appointment books, desk calendars, expense reports, computer printout and other computer readable records, and all drafts or modifications thereof, and all non-identical copies of any such items. Any such document bearing on any sheet or part thereof any marks such as initials, stamped indices, comments or notations or any character or characters which are not part of the signed text or photographic reproduction thereof is to be considered as a separate document. Where there is any question about whether a tangible item otherwise described in these requests falls within the definition of document such tangible item shall be produced.

B. The word “communication” includes without limitation any transmission of information from one person or entity to another, including, without limitation, by personal meeting, conversation, letter, memorandum, telephone, facsimile, or electronic mail. Each request that encompasses information relating in any way to Communications to, from, or within a business or corporate entity is hereby designated to mean, and should be construed to include, all communications by and between representatives, employees, agents or servants of the business or corporate entity.

C. The term “person” is defined as a natural person, firm, proprietorship, association, partnership, corporation or any other type of organization or entity.

D. The term “concerning” should be construed in the broadest possible sense to mean referring to, relating to, regarding, containing, identifying, monitoring, constituting, reflecting, embodying, comprising, stating, dealing with, commenting on, responding to, analyzing, describing, consisting of, discussing, evidencing, mentioning, pertaining to, citing, summarizing, or bearing any logical or factual connection with the matter discussed.

E. The terms “Petitioner,” “Cloud9 Distributors,” “you,” or “your” refers to Petitioner Cloud9 Distributors LLC, and its parent or subsidiary corporations, divisions, affiliates, joint ventures, (and any organizational and operating units), predecessors and successors, present or former officers, directors, shareholders, employees, agents, brokers, attorneys, accountants, representatives and servants of any of them who are acting on behalf of Cloud9 Distributors LLC.

F. “Registrant” or “Unitabac” refers to Registrant Unitabac, LLC and its parent and subsidiary corporations, divisions, affiliates, joint ventures, predecessors and successors, present or former officers, directors, shareholders, employees, agents, brokers, attorneys, accountants, representatives and servants of any of them who are acting on behalf of Unitabac, LLC.

G. The term “Registered Mark” refers to the CLOUD9 trademark that is the subject of Unitabac’s Registration No. 4,068,062 with the United States Patent and Trademark Office, registered on December 6, 2011, for “Cigarillos; Cigars” in International Class 34. The term “Registered Mark” shall also include variations thereof, including but not limited to “CLOUD 9.”

H. As used herein, the terms “all” and “each” shall be construed as all and each to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

I. The terms “and,” “or,” and “and/or” shall be read inclusively to mean “and” as well as “or.”

J. Terms in the singular include the plural, and terms in the plural include the singular.

K. As used herein, the term “date” means the exact date if known and if not known, the approximate date.

INSTRUCTIONS

A. All documents are to be produced which are in your possession, custody or control or which can be obtained upon reasonable investigation of areas within your control. All documents in the possession, custody or control of any of your agents, employees and attorneys, except privileged matters, must be produced.

B. These requests are continuing in nature and you are instructed to make prompt, further and supplemental production whenever an additional document is discovered that is responsive hereto.

C. Each request should be construed independently. No request should be construed by reference to any other document request for the purpose of limiting the scope of the response to such document request.

D. If any request is objected to, in whole or in part, set forth the legal basis for each objection, and set forth those facts upon which you are relying as the basis for each objection.

E. For any responsive documents withheld on the ground of privilege or otherwise, you are to set forth the factual and legal basis for withholding such document, its present location and custodian, and such additional information as may be required to enable it to be identified and to enable the Trademark Trial and Appeal Board (the “Board”) to adjudicate the propriety of

such withholding, including, but not limited to, the type and/or name of the document, its date, author(s), addressee(s), recipient(s), and its general subject matter.

F. All documents and things shall be identified by the request to which they are primarily responsive.

G. For the convenience of the Board and counsel, it is requested that each written document request be set forth immediately preceding the corresponding response.

REQUESTS

1. All documents identified or relied upon in your answers to Unitabac's First Set of Interrogatories.

2. All documents identified in your Initial Disclosures.

3. All documents concerning:

(a) the creation of you, Sultan Tobacco, Inc., and Sultan Tobacco USA, Inc.;

(b) licenses or other authority for those entities to do business in any and all states; and

(c) any dissolution of these entities.

4. All documents concerning licenses or other authority for Mr. Ahmad Nouredine dba Mr. Distributors USA to do business in any and all states.

5. All documents concerning the first use in commerce of the Registered Mark by each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA, including, but not limited to, the geographical scope of such first use by each of those persons.

6. Documents sufficient to show the time period(s) that each of each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors

USA used the Registered Mark in commerce in the United States, and the geographical scope of such use.

7. Documents sufficient to show the channels of trade relating to the products offered and/or sold under or bearing the Registered Mark or any variations thereof by each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

8. Copies of public filings, brochures, press releases, communications, advertisements and promotional or marketing materials which evidence the use of the Registered Mark or any variation thereof by you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

9. All documents concerning the allegation that Sultan Tobacco, Inc., Sultan Tobacco USA, Inc. and Mr. Ahmad Nouredine dba Mr. Distributors USA are predecessors of Cloud9 Distributors LLC.

10. To the extent not provided in response to the foregoing request, all documents that concern or otherwise demonstrate a transfer of any ownership interests or assets/liabilities from:

(a) Sultan Tobacco, Inc. to Sultan Tobacco USA, Inc., Mr. Ahmad Nouredine dba Mr. Distributors USA and/or you;

(b) Sultan Tobacco USA, Inc. to Sultan Tobacco, Inc., Mr. Ahmad Nouredine dba Mr. Distributors USA and/or you;

(c) Mr. Ahmad Nouredine dba Mr. Distributors USA to Sultan Tobacco USA, Inc., Sultan Tobacco, Inc., and/or you.

(d) you to Mr. Ahmad Nouredine dba Mr. Distributors USA, Sultan Tobacco USA, Inc., and/or Sultan Tobacco, Inc.

11. Documents sufficient to show the products offered and/or sold under or bearing the Registered Mark or any variations thereof by each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc. and Mr. Ahmad Nouredine dba Mr. Distributors USA.

12. Documents sufficient to show the dollar volume sales (by year and by state) of products sold under or bearing the Registered Mark or any variations thereof by each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc. and Mr. Ahmad Nouredine dba Mr. Distributors USA.

13. All documents concerning communications, whether oral or written, between you and any person with respect to the Registered Mark or the subject matter of this proceeding.

14. All documents concerning the first adoption of the Registered Mark, or any variation thereof, in the United States, by each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA, including but not limited to:

- (a) development, creation and selection of the Registered Mark;
- (b) the origin or source of inspiration for the Registered Mark;
- (c) any and all trademark searches, opinions, analyses, studies, reports or communications relating to the Registered Mark; and
- (d) the decision to adopt the Registered Mark.

15. All documents concerning your filing and/or prosecution of any application to register the Registered Mark, including communications and correspondence you have had with the USPTO or any other Person relating to such application(s).

16. Any advertising and/or promotional materials bearing the Registered Mark or any variation thereof, and which was prepared by or for you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

17. To the extent not produced in response to the foregoing requests, documents sufficient to show the geographic scope of marketing, advertising, sales, or offers for sale relating to products under or bearing the Registered Mark or any variations thereof by you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

18. Documents sufficient to show the marketing, advertising, sales, or offers to sell goods under or bearing the Registered Mark or any variations thereof conducted in New York by you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

19. Documents sufficient to show the marketing, advertising, sales, or offers to sell goods under or bearing the Registered Mark or any variations thereof conducted in New Jersey by you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

20. A photograph or other exemplar of each product that you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA have offered for sale bearing or under the Registered Mark or any variation thereof.

21. To the extent not provided in response to foregoing requests, all documents sufficient to show your ownership of the Registered Mark or any variation thereof, and your claim to rights in such Mark.

22. To the extent not provided in response to foregoing requests, all documents concerning ownership of the Registered Mark or any variation thereof by Sultan Tobacco, Inc.

23. To the extent not provided in response to foregoing requests, all documents concerning ownership of the Registered Mark or any variation thereof by Sultan Tobacco USA, Inc.

24. To the extent not provided in response to foregoing requests, all documents concerning ownership of the Registered Mark or any variation thereof by Ahmad Nouredine, dba. Mr. Distributors USA.

25. All documents relating to the date of first use of the mark “CLOUD 9 CHARCOAL” as applied-for in U.S. Application No. 85/963,252.

26. All documents concerning competitive intelligence, consumer studies, focus groups or any other investigation or analysis (whether formal or informal) relating to your use or intended use of the Registered Mark, or any variation thereof, or the use of CLOUD9 or any variation thereof by any other party, including but not limited to Unitabac or non-parties having potential rights in CLOUD9 or any variations thereof.

27. All documents concerning Unitabac’s adoption and use of CLOUD9 as a trademark, including but not limited to when and how you learned of such adoption and use and any and all communications regarding such adoption and/or use or actions taken by you in response thereto.

28. All documents concerning any instances of actual confusion or mistake between your use, or intended use, of CLOUD9 or any variation thereof and Unitabac’s use of CLOUD9 or any variation thereof.

29. Copies of any statements or opinions of any witness you intend to call to testify on your behalf in connection with any of the issues involved in this cancellation proceeding.

Respectfully submitted,

/Ryan S. Osterweil/

DAY PITNEY LLP

Richard H. Brown

David I. Greenbaum

Ryan S. Osterweil

7 Times Square

New York, NY 10036

Telephone: (212)-297-5800

Facsimile: (973)-206-6129

Email: rbrown@daypitney.com
dgreenbaum@daypitney.com
rosterweil@daypitney.com

Dated: March 19, 2015

Certificate of Service

I hereby certify that on the date set forth below a true and correct copy of the foregoing **Registrant's First Request for Production of Documents** was served upon the attorneys of record for the Petitioner by email, as agreed-upon by the parties, to lteran@strategiclegalcounseling.com.

Signature: /Ryan S. Osterweil/

By: Ryan S. Osterweil

Date: March 19, 2015

EXHIBIT D

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 4068062
Mark: Cloud9
Registration Date: December 6, 2011

CLOUD9 DISTRIBUTORS, LLC,
Petitioner,

$$\mathbf{V}_s$$
UNITABAC, LLC,
Registrant.**OPPOSITION NO: 91219336**

PETITIONER’S RESPONSE TO REGISTRANT’S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Petitioner hereby submits its responses to Registrant's first request for production of documents.

PRELIMINARY STATEMENT

Petitioner, has not yet completed the investigation of the facts related to this case, has not yet completed discovery in this action, and has not yet completed preparation for trial. All of the responses contained herein are based only upon such information and documents as are presently available to and specifically known to Petitioner or specifically recalled by him. It is anticipated that further discovery and further independent investigation may supply additional responses, which may in turn clarify and

add meaning to known facts, as well as establish entirely new factual matters, all of which may lead to substantial additions to, changes in, and variations from the responses herein set forth.

The following responses are given without prejudice to the right of Petitioner to produce evidence of any subsequently discovered facts that Petitioner may later discover or recall. Petitioner accordingly reserves the right at any time to revise, amend, correct, and add to or clarify any of the responses hereinafter set forth as additional facts are ascertained, analysis are made, legal research completed, and contentions determined or made. Petitioner's responses and objections are not, are not intended to be, and shall not be deemed an admission of the matters stated, implied, or assumed by any or all of the requests.

GENERAL OBJECTIONS

1. Petitioner objects to each request to the extent it seeks production of information that is privileged from disclosure under the attorney client privilege, the attorney work product doctrine, joint defense privilege, or related privileges and doctrines. Inadvertent disclosure or production of any privileged information or document otherwise immune from discovery shall not be deemed a waiver of any applicable privilege or work product protection.

2. Petitioner objects to each requests to the extent it seeks any information generated by or at the direction of Petitioner's counsel subsequent to the filing of the complaint in this action.

3. Petitioner objects to each request to the extent it seeks information of that is obtainable from some other source that is more convenient, less burdensome, or less expensive; and/or is already in Propounding Party's possession, custody, or control.

4. Petitioner objects to each request to the extent it seeks information or documents that are not reasonably calculated to lead to the discovery of relevant, material, or admissible evidence.

5. Petitioner objects to each request to the extent it seeks information or documents outside of Petitioner's possession, custody, or control.

6. Petitioner objects to each request to the extent it is vague, ambiguous, or overly broad and therefore requires Petitioner, to the rest of Petitioner's ability, to make a subjective determination as to what information or documents are being sought.

7. Petitioner objects to each request to the extent it seeks contentions of pure law that are abstract legal issues not dependent on the facts of this case, and therefore not discoverable.

Each of the foregoing General Objections is incorporated into each of the responses as follows:

Response to Request No. 1

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request.

Response to Request No. 2

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 3

A) Responding Party will limit its response to the production of documents from the Secretary of State or other entity sufficient to show the creation of it, Sultan Tobacco, Inc., and Sultan Tobacco USA, Inc. Production of other documents is irrelevant, over broad, and violates the privacy rights of Responding Party and other third parties.

B) Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

C) Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 4

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request.

Response to Request No. 5

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 6

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 7

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 8

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 9

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 10

- a) Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.
- b) Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.
- c) Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.
- d) Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 11

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 12

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and

complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 13

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 14

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are

responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 15

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 16

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 17

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 18

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 19

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a

trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 20

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 21

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 22

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 23

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 24

Objection. Vague and ambiguous with regard to the term "Registered Mark". The definition of "Registered Mark" expressly identifies the trademark "CLOUD9" used in conjunction with "Cigarillos; Cigars". Although Responding Party has used a trademark that is substantially similar to "CLOUD9", it has never used said trademark in conjunction with "Cigarillos; Cigars". Without waiving the above objection and complying with the express definition of "Registered Mark", Responding Party responds as follows:

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request because it has never used the "CLOUD9" mark in conjunction with "Cigarillos; Cigars".

Response to Request No. 25

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 26

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request.

Response to Request No. 27

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request.

Response to Request No. 28

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request.

Response to Request No. 29

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Teran', with a horizontal line extending to the right.

Louis F. Teran
Attorney for Petitioner
Cloud9 Distributors LLC.

Louis F. Teran
SLC LAW GROUP
1055 East Colorado Blvd., Suite #500
Pasadena, CA 91106
Telephone: (818) 484-3217 x200
Facsimile: (866) 665-8877
lteran@strategiclegalcounseling.com

CERTIFICATION OF SERVICE

I certify that a copy of this PETITIONER'S RESPONSE TO REGISTRANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS is being served via USPS on this the 8th day of May, 2015, to the following:

Registrant's Attorney/Representative:

Ryan S. Osterweil
DAY PITNEY LLP
7 Times Square
New York, NY 10063

A handwritten signature in black ink, appearing to read 'L. Teran', written over a horizontal line.

Louis F. Teran

EXHIBIT E

Osterweil, Ryan S.

From: Brown, Richard H. <rbrown@daypitney.com>
Sent: Wednesday, April 15, 2015 11:33 AM
To: 'Louis F. Teran'
Cc: Osterweil, Ryan S.
Subject: RE: Cancellation Proceeding No. 92060426 - CLOUD9

Louis, following up on our call yesterday afternoon, Unitabac is ok with a 20-day extension to respond to its discovery, especially given your indication that Cloud 9 would be producing documents and answering most of the interrogatories. By my reckoning, 20 days would mean a deadline of May 8, 2015.

Regards,

Richard H. Brown | Attorney at Law | [Attorney Bio](#)



One Jefferson Road | Parsippany NJ 07054-2891
t (973) 966 8119 | f (973) 206 6129 | m (201) 323 4266

7 Times Square, Times Square Tower | New York NY 10036
t (212) 297 5854 | f (212) 916 2940

rbrown@daypitney.com | www.daypitney.com

BOSTON | CONNECTICUT | NEW JERSEY | NEW YORK | WASHINGTON, DC



From: Louis F. Teran [<mailto:lteran@strategiclegalcounseling.com>]
Sent: Monday, April 13, 2015 5:05 PM
To: Osterweil, Ryan S.
Cc: Brown, Richard H.; Greenbaum, David I.
Subject: RE: Cancellation Proceeding No. 92060426 - CLOUD9

Mr. Osterweil,

I am in receipt of your Discovery requests in your email below.
However, my schedule has been substantially affected by an unexpected trial scheduled to begin next week.
Thus, I request a 30-day extension to respond. Let me know if you are able to grant me the extension of time. I appreciate your help on this matter.

Thank you

Louis F. Teran
Attorney at Law
SLC Law Group
1055 E. Colorado Blvd., Suite #500

EXHIBIT F

Osterweil, Ryan S.

From: Brown, Richard H. <rbrown@daypitney.com>
Sent: Wednesday, May 13, 2015 9:33 AM
To: 'Louis F. Teran'
Cc: Osterweil, Ryan S.
Subject: RE: Cancellation Proceeding No. 92060426 - CLOUD9

Louis, I have reviewed briefly your client's responses to our requests. Given the claims in the petition, I do not believe your client has provided good faith responses to our discovery requests that contained the term "Registered Mark." That defined term refers to the word "Cloud 9" used as a trademark, not use of the term Cloud 9 only when used in connection with cigarillos and cigars. Such an interpretation would make no sense given the allegations in the Petition. When you asked for an extension to respond, I had asked you whether we would be receiving substantive answers, and you assured me that your clients would be doing so. I am disappointed that what I received were largely non-answers based on what I regard as an implausible interpretation of one of our defined terms given the context of the case.

Please advise me by the close of business today (i.e., 5 pm PT) when your client will provide supplemental answers to all of the discovery requests having the term "Registered Mark" redefined as "the Cloud 9 trademark, which is the subject of Unitabac's Registration No. 4,068,062 and Petitioner's U.S. Trademark Application Serial No. 86/454100, regardless of the goods and services for which Cloud 9 is used." This email concerning only the foregoing issue. We are reviewing your client's other responses and will revert to you if there are deficiencies.

Rich

Richard H. Brown | Attorney at Law | [Attorney Bio](#)



One Jefferson Road | Parsippany NJ 07054-2891
t (973) 966 8119 | f (973) 206 6129 | m (201) 323 4266

7 Times Square, Times Square Tower | New York NY 10036
t (212) 297 5854 | f (212) 916 2940

rbrown@daypitney.com | www.daypitney.com

BOSTON | CONNECTICUT | NEW JERSEY | NEW YORK | WASHINGTON, DC



From: Louis F. Teran [mailto:lteran@strategiclegalcounseling.com]
Sent: Tuesday, May 12, 2015 6:26 PM
To: Brown, Richard H.
Cc: Osterweil, Ryan S.
Subject: RE: Cancellation Proceeding No. 92060426 - CLOUD9

Mr. Brown,

EXHIBIT G

RICHARD H. BROWN
Attorney at Law

One Jefferson Road
Parsippany, NJ 07054-2891
T: (973) 966-8119 F: (973) 206-6129
rbrown@daypitney.com

May 19, 2015

VIA REGULAR MAIL & E-MAIL

Louis F. Teran, Esq.
SLC Law Group
1055 E. Colorado Blvd. - Suite 500
Pasadena, CA 91106

Re: Cloud 9 Distributors' Responses to Discovery Demands

Dear Mr. Teran:

I am sending this letter to address certain deficiencies in the responses provided by Cloud 9 Distributors to Unitabac's First Set of Interrogatories and First Set of Requests for Documents. I note that we never received the paper copies of your client's written responses, which were supposedly sent to us on May 8, 2015. However, we did get an electronic copy of them with your email on May 12, 2015. In that email, you told us that you would be emailing us your client's documents but needed to process them to reduce the file size. Please let me know when can we expect those documents.

As you know from my May 13, 2015 email, most of Cloud 9 Distributors' answers were not responsive because of what we regard as an implausibly narrow interpretation of the term "Registered Mark." Having not heard from you on our request to supplement, we have served a second set of document requests and interrogatories. I now address deficiencies in the other written responses.

Request No. 3. Request 3(a) asked for all documents concerning the creation of you, Sultan Tobacco, Inc. and Sultan Tobacco USA, Inc. In the response to that request, you indicated that documents produced would be limited to those from the Secretary of State or other entity. That response unduly limits the scope of documents responsive to the request, and excludes from production documents regarding internal discussions of the creation of each entity or any other correspondence or documentation concerning the entities' formation, which may lead to the discovery of admissible evidence concerning the allegations about when the Cloud 9 mark was used by your client or its "predecessors." Please confirm that your client will provide all responsive documents to this request.

Louis F. Teran, Esq.
SLC Law Group
May 19, 2015
Page 2

Request 13 asked for all documents concerning communications with respect to the Registered Mark or the subject matter of this proceeding. While your objection to the use of "Registered Mark" is noted in your response to Request 13, the response ignores the explicit request for documents concerning the subject matter of the proceeding. Please confirm your client will provide all documents responsive to that aspect of the request.

We look forward to a prompt response to this letter.

Very truly yours,



Richard H. Brown

EXHIBIT H

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CLOUD9 DISTRIBUTORS LLC,)	
)	Cancellation No. 92060426
)	Registration No. 4068062
Petitioner,)	
)	
v.)	
)	
UNITABAC, LLC,)	
)	
Registrant.)	

REGISTRANT’S SECOND SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Registrant, Unitabac, LLC (“Registrant” or “Unitabac”), by its undersigned attorneys, hereby requests that the following Interrogatories be answered, separately and fully, in writing and under oath, by Petitioner Cloud9 Distributors LLC (“Petitioner” or “Cloud9 Distributors”), within thirty (30) days of the date hereof as provided by the Federal Rules of Civil Procedure. The following Definitions and Instructions apply to these Interrogatories.

DEFINITIONS

A. The term “document” means any written, printed, typed, recorded or graphic matter, however produced, reproduced or stored, including the originals and all non-identical copies, whether different from the originals by reason of any notations made on such copies or otherwise, in the actual or constructive possession, custody or control of Petitioner including, but not limited to, contracts, letter agreements, e-mails, text messages, electronically stored information, records, correspondence, memoranda, handwritten notes, records or summaries of negotiations, records or summaries of interviews or conversations, audio or video recordings, all

web-based media, photographs, corporate minutes, diaries, telephone logs, schedules, drawings, statistical statements, work papers, disks, data cards, films, data processing files, charts, graphs, microfiche, microfilm, contracts, notices, reports, recitals, statements, worksheets, abstracts, resumes, summaries, jottings, market data, books, journals, ledgers, audits, maps, diagrams, research documents, newspapers, appointment books, desk calendars, expense reports, computer printout and other computer readable records, and all drafts or modifications thereof, and all non-identical copies of any such items. Any such Document bearing on any sheet or part thereof any marks such as initials, stamped indices, comments or notations or any character or characters which are not part of the signed text or photographic reproduction thereof is to be considered as a separate Document. Where there is any question about whether a tangible item otherwise described in these requests falls within the definition of Document such tangible item shall be produced.

B. The term “communication” includes without limitation any transmission of information from one person or entity to another, including, without limitation, by personal meeting, conversation, letter, memorandum, telephone, facsimile, or electronic mail. Each request that encompasses information relating in any way to Communications to, from, or within a business or corporate entity is hereby designated to mean, and should be construed to include, all communications by and between representatives, employees, agents or servants of the business or corporate entity.

C. The term “person” is defined as a natural person, firm, proprietorship, association, partnership, corporation or any other type of organization or entity.

D. The term “concerning” should be construed in the broadest possible sense to mean referring to, relating to, regarding, containing, identifying, monitoring, constituting, reflecting,

embodying, comprising, stating, dealing with, commenting on, responding to, analyzing, describing, consisting of, discussing, evidencing, mentioning, pertaining to, citing, summarizing, or bearing any logical or factual connection with the matter discussed.

E. “Petitioner,” “Cloud 9 Distributors,” “you,” or “your” refers to Petitioner Cloud9 Distributors LLC, and its parents, subsidiaries, divisions, affiliates, joint ventures, predecessors and successors, and the present or former officers, directors, shareholders, employees, agents or representatives acting on behalf of Cloud9 Distributors LLC.

F. “Registrant” or “Unitabac” refers to Registrant Unitabac, LLC and its parents, subsidiaries, divisions, affiliates, joint ventures, predecessors and successors, and the present or former officers, directors, shareholders, employees, agents or representatives who are acting on behalf of Unitabac, LLC.

G. The term “Registered Mark” refers to the CLOUD9 trademark, which is the subject of Unitabac’s Registration No. 4,068,062 and Petitioner’s U.S. Trademark Application Serial No. 86/454100, regardless of the goods and services with which CLOUD9 is used. The term “Registered Mark” shall also include variations thereof, including but not limited to “CLOUD 9” and “Cloud9” and “Cloud 9.”

H. The term “identify,” when used with reference to a document, shall mean to state the date thereof, its author or creator (and, if different, the signer or signers), the addressee, the type of document (e.g., letter, memorandum, telegram, chart, magnetic tape, computer printout, tangible physical item, etc.), its present or last-known location and custodian, its general subject matter(s) and/or content, and all other means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a request for its production, pursuant to Rule 34 of the Federal Rules of Civil Procedure or a subpoena *duces tecum*. In the alternative, Cloud9

Distributors may produce the document(s) for inspection and copying at a time and place mutually convenient to the parties.

I. As used herein, the terms “all” and “each” shall be construed as all and each to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

J. The terms “and,” “or,” and “and/or” shall be read inclusively to mean “and” as well as “or.”

K. Terms in the singular include the plural, and terms in the plural include the singular.

L. As used herein, the term “date” means the exact date if known and if not known, the approximate date.

INSTRUCTIONS

A. Each separately numbered or lettered sub-part of each interrogatory requires a separate answer thereto.

B. These interrogatories shall be deemed to be continuing to the fullest extent permitted by the Rules, and Cloud9 Distributors shall promptly provide Unitabac with any supplemental answers and additional information which shall become available to Cloud9 Distributors at a later date.

C. Each interrogatory should be construed independently. No interrogatory should be construed by reference to any other interrogatory for the purpose of limiting the scope of the response to such interrogatory.

D. For the convenience of the Board and counsel, it is requested that each written interrogatory be set forth immediately preceding the corresponding response.

INTERROGATORIES

Interrogatory No. 19

For each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA, identify: (a) when and how each such person first learned about the Registered Mark; (b) when and how each person first used the Registered Mark in commerce and the period in which that person used the Registered Mark in commerce; (c) the individual persons who participated in the decision to use the Registered Mark in commerce; and (d) all persons with knowledge about those facts.

Interrogatory No. 20

For each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA that discontinued use of the Registered Mark, identify (a) when that entity stopped using the Registered Mark; (b) why such use was discontinued; (c) all persons who participated in any decision to discontinue such use; and (d) all persons with knowledge about those facts.

Interrogatory No. 21

To the extent not provided in response to previous interrogatories, identify all persons with knowledge of facts concerning your claim of ownership of the Registered Mark or any variation thereof, and for each such person set forth a summary of his or her factual knowledge.

Interrogatory No. 22

To the extent not provided in response to previous interrogatories, identify all persons with knowledge of facts concerning a claim of ownership of the Registered Mark or any variation thereof by Sultan Tobacco, Inc., and for each such person set forth a summary of his or her factual knowledge.

Interrogatory No. 23

To the extent not provided in response to previous interrogatories, identify all persons with knowledge of facts concerning claim of ownership of the Registered Mark or any variation thereof by Sultan Tobacco USA, Inc. and for each such person set forth a summary of his or her factual knowledge.

Interrogatory No. 24

To the extent not provided in response to previous interrogatories, identify all persons with knowledge of facts concerning claim of ownership of the Registered Mark or any variation thereof by Ahmad Nouredine, d.b.a. Mr. Distributors USA, and for each such person set forth a summary of his or her factual knowledge.

Interrogatory No. 25

Identify when, by whom, and by what method any ownership of the Registered Mark or any variation thereof was transferred from: (a) Sultan Tobacco, Inc. to another person; (b) Sultan Tobacco USA, Inc. to another person; (c) Ahmad Nouredine, d.b.a. Mr. Distributors USA to another person; and (d) Cloud9 Distributors to another person.

Interrogatory No. 26

Identify the geographic scope of marketing, advertising, sales, or offers for sale relating to products sold or offered under or bearing the Registered Mark or any variations thereof by you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

Interrogatory No. 27

If you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA have marketed, advertised or sold goods under or bearing the Registered

Mark or any variations thereof in New York, identify the dates when such activities first took place and whether they are ongoing.

Interrogatory No. 28

If you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA have marketed, advertised or sold goods under or bearing the Registered Mark or any variations thereof in New Jersey, identify the dates when such activities first took place and whether they are ongoing.

Interrogatory No. 29

Identify the total sales of goods (on an annual basis) sold under or bearing the Registered Mark or any variation thereof since the date of first use identified in Interrogatory No. 19 above.

Interrogatory No. 30

State whether a trademark search or any other type of search was conducted by (or on behalf of) you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., or Mr. Ahmad Nouredine dba Mr. Distributors USA, in connection with selection and adoption of the Registered Mark or any variation thereof. If so, identify all documents relating and/or referring to such search(es) and identify all person(s) with knowledge thereof.

Interrogatory No. 31

To the extent not fully provided in response to previous interrogatories, identify all facts supporting your continued use in commerce of the Registered Mark or any variation thereof since the date of first use identified in Interrogatory No. 19 above.

Interrogatory No. 32

If Cloud9 Distributors is aware of any reports of confusion or mistake as to the source, origin, sponsorship or association of goods offered or sold by Cloud9 Distributors under the

Registered Mark or any variation thereof or by Unitabac under the Registered Mark, provide a summary of the reports of confusion and persons with knowledge of such reports.

Respectfully submitted,

/Ryan S. Osterweil/

DAY PITNEY LLP

Richard H. Brown

David I. Greenbaum

Ryan S. Osterweil

7 Times Square

New York, NY 10036

Telephone: (212)-297-5800

Facsimile: (973)-206-6129

Email: rbrown@daypitney.com
dgreenbaum@daypitney.com
rosterweil@daypitney.com

Dated: May 13, 2015

Certificate of Service

I hereby certify that on the date set forth below a true and correct copy of the foregoing **Registrant's Second Set of Interrogatories** was served upon the attorneys of record for the Petitioner by email, as agreed-upon by the parties, to literan@strategiclegalcounseling.com.

Signature: /Ryan S. Osterweil/

By: Ryan S. Osterweil

Date: May 13, 2015

EXHIBIT I

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 4068062
Mark: Cloud9
Registration Date: December 6, 2011

CLOUD9 DISTRIBUTORS, LLC,

Petitioner,

v.

UNITABAC, LLC,

Registrant.

)
)
)
)
) **OPPOSITION NO: 91219336**
)
)
)
)
)
)
)

**PETITIONER'S RESPONSE TO REGISTRANT'S SECOND SET OF
INTERROGATORIES**

Petitioner hereby submits its responses to Registrant's first set of interrogatories.

PRELIMINARY STATEMENT

Petitioner, has not yet completed the investigation of the facts related to this case, has not yet completed discovery in this action, and has not yet completed preparation for trial. All of the responses contained herein are based only upon such information and documents as are presently available to and specifically known to Petitioner or specifically recalled by him. It is anticipated that further discovery and further independent investigation may supply additional responses, which may in turn clarify and add meaning to known facts, as well as establish entirely new factual matters, all of

which may lead to substantial additions to, changes in, and variations from the responses herein set forth.

The following responses are given without prejudice to the right of Petitioner to produce evidence of any subsequently discovered facts that Petitioner may later discover or recall. Petitioner accordingly reserves the right at any time to revise, amend, correct, and add to or clarify any of the responses hereinafter set forth as additional facts are ascertained, analysis are made, legal research completed, and contentions determined or made. Petitioner's responses and objections are not, are not intended to be, and shall not be deemed an admission of the matters stated, implied, or assumed by any or all of the requests.

GENERAL OBJECTIONS

1. Petitioner objects to each request to the extent it seeks information that is privileged from disclosure under the attorney client privilege, the attorney work product doctrine, joint defense privilege, or related privileges and doctrines. Inadvertent disclosure or production of any privileged information or document otherwise immune from discovery shall not be deemed a waiver of any applicable privilege or work product protection.

2. Petitioner objects to each requests to the extent it seeks any information generated by or at the direction of Petitioner's counsel subsequent to the filing of the complaint in this action.

3. Petitioner objects to each request to the extent it seeks information of that is obtainable from some other source that is more convenient, less burdensome, or less expensive; and/or is already in Propounding Party's possession, custody, or control.

4. Petitioner objects to each request to the extent it seeks information or documents that are not reasonably calculated to lead to the discovery of relevant, material, or admissible evidence.

5. Petitioner objects to each request to the extent it seeks information or documents outside of Petitioner's possession, custody, or control.

6. Petitioner objects to each request to the extent it is vague, ambiguous, or overly broad and therefore requires Petitioner, to the rest of Petitioner's ability, to make a subjective determination as to what information or documents are being sought.

7. Petitioner objects to each request to the extent it seeks contentions of pure law that are abstract legal issues not dependent on the facts of this case, and therefore not discoverable.

Each of the foregoing General Objections is incorporated into each of the responses as follows:

Response to Interrogatory No. 19

- a) On or around January 2013, Mr. Ahmad Nourredine was informed of the Registered Mark by Propounding Party in Las Vegas, Nevada at a tobacco trade convention.
- b) Sultan Tobacco, Inc used mark on or around from 2003 to 2006 to promote and sell hookahs, hookah tobacco, and hookah accessories; Sultan Tobacco USA, Inc. used mark on or around 2006 to 2009 to promote and sell hookahs, hookah tobacco, and hookah accessories; Mr. Distributors USA used mark on or around 2009 to 2012 to promote and sell hookahs, hookah tobacco, and hookah accessories.
- c) Ahmad Nouredine
- d) Ahmad Nouredine:

Response to Interrogatory No. 20

- a) See response to Interrogatory No. 19 above.
- b) Each discontinued using the mark because the assets were transferred to one of the other entities.
- c) Ahmad Nouredine
- d) Ahmad Nouredine

Response to Interrogatory No. 21

Ahmad Nouredine.

Response to Interrogatory No. 22

Ahmad Noureddine has knowledge of all facts known by Petitioner concerning any claim of ownership of the mark.

Response to Interrogatory No. 23

Ahmad Noureddine has knowledge of all facts known by Petitioner concerning any claim of ownership of the mark.

Response to Interrogatory No. 24

Ahmad Noureddine has knowledge of all facts known by Petitioner concerning any claim of ownership of the mark.

Response to Interrogatory No. 25

- a) On or around 2006; Ahmad Noureddine; by agreement.
- b) On or around 2009; Ahmad Noureddine; by agreement.
- c) On or around 2012; Ahmad Noureddine; by agreement.

Response to Interrogatory No. 26

Throughout the United States and other countries.

Response to Interrogatory No. 27

None.

Response to Interrogatory No. 28

Responding Party is unable to respond at this time. However, discovery is ongoing and Responding Party reserves the right to amend its response at a later time when the information becomes available.

Response to Interrogatory No. 29

Objection. Irrelevant. The information requested is irrelevant and not narrowly tailored to lead to the discovery of any information relevant to the issues in dispute in this case. In fact, the information requested is designed to harass Responding Party and to attain its most confidential and private business information for an improper purpose since the parties are direct competitors.

Response to Interrogatory No. 30

Trademark searches were conducted. No documents available. Ahmad Nouredine has knowledge of facts.

Response to Interrogatory No. 31

Responding Party continues to use the mark to promote and sell hookahs, hookah tobacco, and hookah accessories.

Response to Interrogatory No. 32

None

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Teran', with a horizontal line extending to the right.

Louis F. Teran
Attorney for Petitioner
Cloud9 Distributors LLC.

Louis F. Teran
SLC LAW GROUP
1055 East Colorado Blvd., Suite #500
Pasadena, CA 91106
Telephone: (818) 484-3217 x200
Facsimile: (866) 665-8877
lteran@strategiclegalcounseling.com

CERTIFICATION OF SERVICE

I certify that a copy of this PETITIONER'S RESPONSE TO REGISTRANT'S
SECOND SET OF INTERROGATORIES is being served via USPS on this the 12th day
of June, 2015, to the following:

Registrant's Attorney/Representative:

Ryan S. Osterweil
DAY PITNEY LLP
7 Times Square
New York, NY 10063

A handwritten signature in black ink, appearing to read 'L. Teran', is written over a horizontal line.

Louis F. Teran

EXHIBIT J

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CLOUD9 DISTRIBUTORS LLC,)	
)	
Petitioner,)	
)	
v.)	
)	
UNITABAC, LLC,)	Cancellation No. 92060426
)	Registration No. 4068062
Registrant.)	
)	

REGISTRANT’S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Registrant, Unitabac, LLC (“Registrant” or “Unitabac”), by its undersigned attorneys, hereby requests that Petitioner Cloud9 Distributors LLC (“Petitioner” or “Cloud9 Distributors”), produce to the undersigned the documents described below within thirty (30) days of the date hereof. These requests are intended to include all documents and things in the possession, custody or control of Petitioner and its parents, divisions, subsidiaries, and affiliates, or any representatives thereof, wherever located. The following Definitions and Instructions apply to these Requests for Production.

DEFINITIONS

A. The term “document” means any written, printed, typed, recorded or graphic matter, however produced, reproduced or stored, including the originals and all non-identical copies, whether different from the originals by reason of any notations made on such copies or otherwise, in the actual or constructive possession, custody or control of Petitioner including, but not limited to, contracts, letter agreements, e-mails, text messages, electronically stored

information, records, correspondence, memoranda, handwritten notes, records or summaries of negotiations, records or summaries of interviews or conversations, audio or video recordings, all web-based media, photographs, corporate minutes, diaries, telephone logs, schedules, drawings, statistical statements, work papers, disks, data cards, films, data processing files, charts, graphs, microfiche, microfilm, contracts, notices, reports, recitals, statements, worksheets, abstracts, resumes, summaries, jottings, market data, books, journals, ledgers, audits, maps, diagrams, research documents, newspapers, appointment books, desk calendars, expense reports, computer printout and other computer readable records, and all drafts or modifications thereof, and all non-identical copies of any such items. Any such document bearing on any sheet or part thereof any marks such as initials, stamped indices, comments or notations or any character or characters which are not part of the signed text or photographic reproduction thereof is to be considered as a separate document. Where there is any question about whether a tangible item otherwise described in these requests falls within the definition of document such tangible item shall be produced.

B. The word “communication” includes without limitation any transmission of information from one person or entity to another, including, without limitation, by personal meeting, conversation, letter, memorandum, telephone, facsimile, or electronic mail. Each request that encompasses information relating in any way to Communications to, from, or within a business or corporate entity is hereby designated to mean, and should be construed to include, all communications by and between representatives, employees, agents or servants of the business or corporate entity.

C. The term “person” is defined as a natural person, firm, proprietorship, association, partnership, corporation or any other type of organization or entity.

D. The term “concerning” should be construed in the broadest possible sense to mean referring to, relating to, regarding, containing, identifying, monitoring, constituting, reflecting, embodying, comprising, stating, dealing with, commenting on, responding to, analyzing, describing, consisting of, discussing, evidencing, mentioning, pertaining to, citing, summarizing, or bearing any logical or factual connection with the matter discussed.

E. The terms “Petitioner,” “Cloud9 Distributors,” “you,” or “your” refers to Petitioner Cloud9 Distributors LLC, and its parent or subsidiary corporations, divisions, affiliates, joint ventures, (and any organizational and operating units), predecessors and successors, present or former officers, directors, shareholders, employees, agents, brokers, attorneys, accountants, representatives and servants of any of them who are acting on behalf of Cloud9 Distributors LLC.

F. “Registrant” or “Unitabac” refers to Registrant Unitabac, LLC and its parent and subsidiary corporations, divisions, affiliates, joint ventures, predecessors and successors, present or former officers, directors, shareholders, employees, agents, brokers, attorneys, accountants, representatives and servants of any of them who are acting on behalf of Unitabac, LLC.

G. The term “Registered Mark” refers to the CLOUD9 trademark, which is the subject of Unitabac’s Registration No. 4,068,062 and Petitioner’s U.S. Trademark Application Serial No. 86/454100, regardless of the goods and services with which CLOUD9 is used. The term “Registered Mark” shall also include variations thereof, including but not limited to “CLOUD 9” and “Cloud9” and “Cloud 9.”

H. As used herein, the terms “all” and “each” shall be construed as all and each to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

I. The terms “and,” “or,” and “and/or” shall be read inclusively to mean “and” as well as “or.”

J. Terms in the singular include the plural, and terms in the plural include the singular.

K. As used herein, the term “date” means the exact date if known and if not known, the approximate date.

INSTRUCTIONS

A. All documents are to be produced which are in your possession, custody or control or which can be obtained upon reasonable investigation of areas within your control. All documents in the possession, custody or control of any of your agents, employees and attorneys, except privileged matters, must be produced.

B. These requests are continuing in nature and you are instructed to make prompt, further and supplemental production whenever an additional document is discovered that is responsive hereto.

C. Each request should be construed independently. No request should be construed by reference to any other document request for the purpose of limiting the scope of the response to such document request.

D. If any request is objected to, in whole or in part, set forth the legal basis for each objection, and set forth those facts upon which you are relying as the basis for each objection.

E. For any responsive documents withheld on the ground of privilege or otherwise, you are to set forth the factual and legal basis for withholding such document, its present location and custodian, and such additional information as may be required to enable it to be identified and to enable the Trademark Trial and Appeal Board (the “Board”) to adjudicate the propriety of

such withholding, including, but not limited to, the type and/or name of the document, its date, author(s), addressee(s), recipient(s), and its general subject matter.

F. All documents and things shall be identified by the request to which they are primarily responsive.

G. For the convenience of the Board and counsel, it is requested that each written document request be set forth immediately preceding the corresponding response.

REQUESTS

1. All documents concerning the first use in commerce of the Registered Mark by each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA, including, but not limited to, the geographical scope of such first use by each of those persons.

2. Documents sufficient to show the time period(s) that each of each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA used the Registered Mark in commerce in the United States, and the geographical scope of such use.

3. Documents sufficient to show the channels of trade relating to the products offered and/or sold under or bearing the Registered Mark or any variations thereof by each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

4. Copies of public filings, brochures, press releases, communications, advertisements and promotional or marketing materials which evidence the use of the Registered Mark or any variation thereof by you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

5. Documents sufficient to show the products offered and/or sold under or bearing the Registered Mark or any variations thereof by each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc. and Mr. Ahmad Nouredine dba Mr. Distributors USA.

6. Documents sufficient to show the dollar volume sales (by year and by state) of products sold under or bearing the Registered Mark or any variations thereof by each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc. and Mr. Ahmad Nouredine dba Mr. Distributors USA.

7. All documents concerning communications, whether oral or written, between you and any person with respect to the Registered Mark or the subject matter of this proceeding.

8. All documents concerning the first adoption of the Registered Mark, or any variation thereof, in the United States, by each of you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA, including but not limited to:

- (a) development, creation and selection of the Registered Mark;
- (b) the origin or source of inspiration for the Registered Mark;
- (c) any and all trademark searches, opinions, analyses, studies, reports or communications relating to the Registered Mark; and
- (d) the decision to adopt the Registered Mark.

9. All documents concerning your filing and/or prosecution of any application to register the Registered Mark, including communications and correspondence you have had with the USPTO or any other Person relating to such application(s).

10. Any advertising and/or promotional materials bearing the Registered Mark or any variation thereof, and which was prepared by or for you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

11. To the extent not produced in response to the foregoing requests, documents sufficient to show the geographic scope of marketing, advertising, sales, or offers for sale relating to products under or bearing the Registered Mark or any variations thereof by you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

12. Documents sufficient to show the marketing, advertising, sales, or offers to sell goods under or bearing the Registered Mark or any variations thereof conducted in New York by you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

13. Documents sufficient to show the marketing, advertising, sales, or offers to sell goods under or bearing the Registered Mark or any variations thereof conducted in New Jersey by you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA.

14. A photograph or other exemplar of each product that you, Sultan Tobacco, Inc., Sultan Tobacco USA, Inc., and Mr. Ahmad Nouredine dba Mr. Distributors USA have offered for sale bearing or under the Registered Mark or any variation thereof.

15. To the extent not provided in response to foregoing requests, all documents sufficient to show your ownership of the Registered Mark or any variation thereof, and your claim to rights in such Mark.

16. To the extent not provided in response to foregoing requests, all documents concerning ownership of the Registered Mark or any variation thereof by Sultan Tobacco, Inc.

17. To the extent not provided in response to foregoing requests, all documents concerning ownership of the Registered Mark or any variation thereof by Sultan Tobacco USA, Inc.

18. To the extent not provided in response to foregoing requests, all documents concerning ownership of the Registered Mark or any variation thereof by Ahmad Nouredine, dba. Mr. Distributors USA.

19. All documents identified or relied upon in your answers to Unitabac's Second Set of Interrogatories.

Respectfully submitted,

/Ryan S. Osterweil/

DAY PITNEY LLP

Richard H. Brown

David I. Greenbaum

Ryan S. Osterweil

7 Times Square

New York, NY 10036

Telephone: (212)-297-5800

Facsimile: (973)-206-6129

Email: rbrown@daypitney.com
dgreenbaum@daypitney.com
rosterweil@daypitney.com

Dated: May 13, 2015

Certificate of Service

I hereby certify that on the date set forth below a true and correct copy of the foregoing **Registrant's Second Request for Production of Documents** was served upon the attorneys of record for the Petitioner by email, as agreed-upon by the parties, to lteran@strategiclegalcounseling.com.

Signature: /Ryan S. Osterweil/

By: Ryan S. Osterweil

Date: May 13, 2015

EXHIBIT K

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 4068062
Mark: Cloud9
Registration Date: December 6, 2011

CLOUD9 DISTRIBUTORS, LLC,
Petitioner,

$$\mathbf{V}_s$$
UNITABAC, LLC,
Registrant.**OPPOSITION NO: 91219336**

PETITIONER’S RESPONSE TO REGISTRANT’S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

Petitioner hereby submits its responses to Registrant's first request for production of documents.

PRELIMINARY STATEMENT

Petitioner, has not yet completed the investigation of the facts related to this case, has not yet completed discovery in this action, and has not yet completed preparation for trial. All of the responses contained herein are based only upon such information and documents as are presently available to and specifically known to Petitioner or specifically recalled by him. It is anticipated that further discovery and further independent investigation may supply additional responses, which may in turn clarify and

add meaning to known facts, as well as establish entirely new factual matters, all of which may lead to substantial additions to, changes in, and variations from the responses herein set forth.

The following responses are given without prejudice to the right of Petitioner to produce evidence of any subsequently discovered facts that Petitioner may later discover or recall. Petitioner accordingly reserves the right at any time to revise, amend, correct, and add to or clarify any of the responses hereinafter set forth as additional facts are ascertained, analysis are made, legal research completed, and contentions determined or made. Petitioner's responses and objections are not, are not intended to be, and shall not be deemed an admission of the matters stated, implied, or assumed by any or all of the requests.

GENERAL OBJECTIONS

1. Petitioner objects to each request to the extent it seeks production of information that is privileged from disclosure under the attorney client privilege, the attorney work product doctrine, joint defense privilege, or related privileges and doctrines. Inadvertent disclosure or production of any privileged information or document otherwise immune from discovery shall not be deemed a waiver of any applicable privilege or work product protection.

2. Petitioner objects to each requests to the extent it seeks any information generated by or at the direction of Petitioner's counsel subsequent to the filing of the complaint in this action.

3. Petitioner objects to each request to the extent it seeks information of that is obtainable from some other source that is more convenient, less burdensome, or less expensive; and/or is already in Propounding Party's possession, custody, or control.

4. Petitioner objects to each request to the extent it seeks information or documents that are not reasonably calculated to lead to the discovery of relevant, material, or admissible evidence.

5. Petitioner objects to each request to the extent it seeks information or documents outside of Petitioner's possession, custody, or control.

6. Petitioner objects to each request to the extent it is vague, ambiguous, or overly broad and therefore requires Petitioner, to the rest of Petitioner's ability, to make a subjective determination as to what information or documents are being sought.

7. Petitioner objects to each request to the extent it seeks contentions of pure law that are abstract legal issues not dependent on the facts of this case, and therefore not discoverable.

Each of the foregoing General Objections is incorporated into each of the responses as follows:

Response to Request No. 1

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 2

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 3

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 4

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 5

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 6

Objection. Irrelevant. The information requested is irrelevant and not narrowly tailored to lead to the discovery of any information relevant to the issues in dispute in

this case. In fact, the information requested is designed to harass Responding Party and to attain its most confidential and private business information for an improper purpose since the parties are direct competitors.

Response to Request No. 7

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request.

Response to Request No. 8

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 9

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request.

Response to Request No. 10

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 11

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 12

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request.

Response to Request No. 13

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 14

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 15

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 16

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 17

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 18

Responding Party will produce responsive and unprivileged documents that are in his possession, custody, or control.

Response to Request No. 19

After conducting a diligent search and reasonable inquiry, Responding Party has been unable to locate any documents in its possession, custody, or control that are responsive to this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'L. Teran', written over a horizontal line.

Louis F. Teran
Attorney for Petitioner
Cloud9 Distributors LLC.

Louis F. Teran
SLC LAW GROUP
1055 East Colorado Blvd., Suite #500
Pasadena, CA 91106
Telephone: (818) 484-3217 x200
Facsimile: (866) 665-8877
lteran@strategiclegalcounseling.com

CERTIFICATION OF SERVICE

I certify that a copy of this PETITIONER'S RESPONSE TO REGISTRANT'S
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS is being served via
USPS on this the 12th day of June, 2015, to the following:

Registrant's Attorney/Representative:

Ryan S. Osterweil
DAY PITNEY LLP
7 Times Square
New York, NY 10063

A handwritten signature in black ink, appearing to read 'L. Teran', written over a horizontal line.

Louis F. Teran

EXHIBIT L

RICHARD H. BROWN

Attorney at Law

7 Times Square, Times Square Tower
New York, NY 10036

T: (212) 297-5854 F: (973) 206-6129
rbrown@daypitney.com

July 9, 2015

Via Email and Regular Mail

Louis F. Teran, Esq.
SLC Law Group
1055 E. Colorado Blvd, Suite 500
Pasadena, CA 91106

Re: Cloud 9 Distributors LLC. v. Unitabac, LLC
Registration No. 4068062/Cancellation No. 92060426

Dear Louis:

I am writing concerning deficiencies in Cloud 9's discovery responses. Some of these issues have been raised previously, but you have failed to address them. Given that we intend to take the deposition of Cloud 9 and Mr. Nouredine, it is imperative that these deficiencies be cured promptly. To the extent they are not, or that we are unable to resolve disputes about your client's objections, we intend to move to compel.

Document Responses and Production

1. Document redactions. As noted in my June 29, 2015 email, your client has redacted important information from the invoices it has produced. You have not responded to my email. Please have Cloud 9 provide unredacted copies of the invoices as soon as possible. I also note that there are redactions in the Exclusive Distributorship Agreement (0060-65). Please produce an unredacted copy of that document.

2. Written Response to First Request for Production of Documents. As noted in my May 19, 2015 letter, there are issues with Cloud 9's written responses to Unitabac's First Request for Production of Documents, i.e., its objections on RFP Nos. 3 and 13. Despite numerous follow-ups by us, you have not responded to that letter. Please give me your availability over the next several business days for a meet and confer to see if the issues raised in that letter, as well as the other issues raised in this letter, can be resolved without our needing to file a motion to compel.

3. Written Response to Second Request for Production of Documents. There are several issues with Cloud 9's written response.

Louis Teran, Esq.

July 9, 2015

Page 2

- Request No. 6. Cloud 9 refuses to provide documents in response to this request for documents showing its dollar volume of sales of products sold under the Registered Mark. The volume of sales of products under the mark at issue is relevant to demonstrating the extent to which Cloud 9, and its alleged predecessors, used that mark in commerce.
- Request No. 7. Cloud 9 represents that it has no documents concerning communications between it and anyone else concerning the Registered Mark or the subject matter of the proceeding. However, it is a matter of public record that Mr. Nouredine applied for a registration for Cloud 9 Charcoal in June 2013, which application was later abandoned. Please let us know if Mr. Nouredine has documents relating to that application.

4. Document Production Deficiencies. In addition to the redaction issues discussed above, we note the following issues with Cloud 9's document production.

- Lack of Corporate Formation documents. Although Cloud 9 represented that it would produce documents filed with public authorities on the formation and dissolution of various entities (response to First RFP No. 3), those documents have not been produced. In addition, although Cloud 9 claimed that Mr. Noredine was doing business individually under Mr. Distributors, it appears that Mr. Distributors is (or was) a corporation. Please confirm that formation and dissolution documents will be produced for that entity as well. (Obviously, we contest the self-imposed limitation on the response to RFP No. 3 for the reasons stated in our May 19, 2015 letter).
- Missing Licensing/Authority to Do Business documents. The only documents produced in response to First RFP No. 3(b) are from Cloud 9 Distributors. Please have your client provided similar documents for Sultan Tobacco, Inc., Sultan Tobacco USA, Inc. and Mr. Distributors.
- Lack of Documents in response to First RFP Nos. 9 and 10. These requests sought materials demonstrating that the various entities are predecessors of Cloud 9, and demonstrating that there was any transfer of ownership interests or assets among the various entities. No responsive documents have been produced. Please confirm whether there are any such documents.
- Second RFP No. 8. There do not appear to be any documents concerning the decision to develop and the decision to adopt the Registered Mark. Please confirm whether there are any responsive documents.

Louis Teran, Esq.
July 9, 2015
Page 3

Interrogatory Answers

1. Failure to provide sworn answers to Unitabac's Interrogatories. Neither set of interrogatory responses has been sworn to by a Cloud 9 representative. Please have that cured deficiency promptly.

2. Deficiencies in Cloud 9's Responses to Unitabac's Second Set of Interrogatories.

- Interrogatory No. 19. There is no responsive information with respect to Cloud 9. Please supplement the response to cure that deficiency.
- Interrogatories Nos. 21-24. There is no summary provided for Mr. Nouredine's knowledge in response to any of these interrogatories. Please supplement the response to cure that deficiency.
- Interrogatory No. 28. Please explain why Cloud 9 is unable to answer this interrogatory, and given Mr. Nouredine's position with Sultan Tobacco USA, Sultan Tobacco, Inc., and doing business as Mr. Distributor USA, why answers cannot be provided on behalf of those entities as well. Please identify the information you expect to become available in order to answer this interrogatory.
- Interrogatory No. 29. The volume of sales of products under the mark at issue is relevant to demonstrating the extent to which Cloud 9, and its alleged predecessors, used that mark in commerce. If Cloud 9 believes that it would somehow be injured if sales information were shown to Unitabac, you and I should discuss whether that material should produce under the TTAB's Standard Protective Order agreement or some modification thereto. It is inappropriate to withhold that information. Please be prepared to address this issue at the meet and confer.

As noted above, please let me know your availability for a meet and confer either later this week or early next week.

Very truly yours,
s/Richard H. Brown

Richard H. Brown

RHB/s
cc: Unitabac, LLC

EXHIBIT M

RICHARD H. BROWN

Attorney at Law

7 Times Square, Times Square Tower
New York, NY 10036

T: (212) 297-5854 F: (973) 206-6129
rbrown@daypitney.com

July 13, 2015

Via Email and Regular Mail

Louis F. Teran, Esq.
SLC Law Group
1055 E. Colorado Blvd, Suite 500
Pasadena, CA 91106

Re: Cloud 9 Distributors LLC. v. Unitabac, LLC
Registration No. 4068062/Cancellation No. 92060426

Dear Louis:

I am following up on my July 9, 2015 letter and your call to me of the same day (before you had a chance to read my letter. The letter concerned deficiencies in Cloud 9's discovery responses. Please let me know your availability for a meet and confer on July 14, 15 or 16. Please let me know of a time that would work for you. It important to call the meet and confer soon, as we are planning to take depositions of Cloud 9, Ahmad Nouredine, and Diana Nouredine, and it makes sense to have the discovery issues resolved in advance of those depositions.

During our July 9 call, you proposed generally a resolution based on a coexistence agreement between the parties. As I told you, we need, at a minimum, to have the discovery issues resolved (particularly the redactions and documents showing the chain of title from Cloud 9's predecessor it) in order to have Unitabac meaningfully consider that proposal.

Very truly yours,

s/Richard H. Brown

Richard H. Brown

RHB/s

cc: Unitabac, LLC